THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

W.P.NOS.21278, 21268 AND 21265 OF 2004

COMMON ORDER

DISPOSED OF ON : 09-12-2005.

W.P.NO.21278 OF 2004

BETWEEN:

K.PARIMALA REDDY … PETITIONER

AND

HUDA, HYDERABAD AND OTHERS … RESPONDENTS

W.P.NO.21265 OF 2004

BETWEEN:

J.K.RAMESH … PETITIONER

AND

HUDA, HYDERABAD AND OTHERS … RESPONDENTS

W.P.NO.21268 OF 2004

BETWEEN:

M.R.NARSING RAO … PETITIONER

AND

HUDA, HYDERABAD AND OTHERS … RESPONDENTS

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COMMON ORDER:

1. Since common questions of law and fact are involved and as the relief sought for in all the three writ petitions is well-nigh identical, they are being disposed of by this common order.

2. In all the three writ petitions revised/modified sanction lay out under EWS scheme in the year 1999 issued by the Hyderabad Urban Development Authority (for short HUDA) has been challenged. It is the grievance of the writ petitioners that roads shown in the original lay out plan have been converted into house plots and thus the revised lay out plan is to be declared as illegal and arbitrary.

3. Counter affidavits have been filed by the respondents. It is suffice to refer counter affidavit of 1st respondent. Para four of the counter affidavit of HUDA-1st respondent is:

" 4. In reply to the allegations made by the petitioner in the affidavit filed in support of the writ petition, it is submitted that the 3rd respondent M/s Mutyala Rao Housing Society Ltd, represented by its President R.Anjaiah of the Society is having Gram Panchayat lay out plan which was sanctioned vide permit No.71/68, dated 24.6.68, the same was forwarded by the 2nd respondent vide Lr.No.B2/2557/97, dated 10.10.98 duly earmarking open space areas. It is submitted that the issue of leaving the open spaces is already considered by this Honourable Court in W.P.No.29937 of 1998 filed by R.Subramanyam and W.P.No.688 of 2000 and both writ petitions were disposed of. Further, 1st respondent in the year 1982 accorded sanction of approving lay out to an extent of Ac.30.00 providing number of Plot Nos.1181 in favour of said weaker section of Mutyala Rao Housing Society in land bearing Sy.Nos.218/1/3 of Malkajgiri village. It is submitted that the 2nd respondent has forwarded a proposal for revised lay out duly enclosing the letter District Manager, Housing Cell, Collectorate, Hyderabad District requesting this authority by letter No.1248/A/DM9H)/colltr., dt.5.1.99 to approve the revised lay out plan

submitted by President of Society. Accordingly the authority had technically approved the lay out plan dated 20.4.99 duly maintaining the lay out rules in force with the following conditions insisting of 10% open spaces earmarked in Gram Panchayat lay out plan. Later the President of the society approached the Government for relaxation of plotted area. Thereafter the Government after careful examination accorded the relaxation vide government Lr.No.4753/II/99-I, MA, dated 11.3.99 directing the authority to accommodate 100 E.W.S. houses in said lay out under residential components more than 60% in the Mutyala Rao Housing Society Ltd., Neredmet, Malkajgiri village, R.R. District. This authority has modified the earlier revised plan without changing to area intended for proposed school, Community Hall, temple, sceptic tank etc., area also revised an area of 2093 sq. yards i.e. 1.97 % towards the open space."

4. Heard learned counsel appearing for the petitioners, learned Standing Counsel for HUDA appearing for 1st respondent, learned Standing Counsel for Municipality appearing for 2nd respondent, learned counsel appearing for 3rd respondent-Society, and learned counsel appearing for 4th respondent and learned Government Pleader for Municipal Administration appearing for the 5th respondent.

5. Learned counsel appearing for the petitioners submits that in revised lay out plan roads have been converted into house plots and the same have been allotted to 4th respondent in all the writ petitions. He further submits that if 4th respondent in each writ petition is permitted to construct buildings great prejudice would be caused to the petitioners in enjoyment of their property since road to one of the sides of the petitioners' buildings would be blocked.

6. Learned counsel appearing for the 3rd respondent-Society submits that the writ petitioners are not entitled to question the revised lay out plan since they are not members of the Society. Learned Standing Counsel for HUDA appearing for the 1st respondent submits that the revised lay out plan came to be issued basing on the directions issued by the Government and thus 1st respondent-HUDA cannot be found fault in issuing the revised lay out plan.

7. The revised lay out plan came to be questioned in this court in W.P.No.29937 of 1998 and 688 of 2000 (R.SUBRMANYAM v. HUDA, HYD), which were dismissed on 12.4.2000. The relevant portion of the order reads as under:

" …..The petitioners have challenged the jurisdiction under Article 226 of the Constitution of India on the premise that the sanction accorded by the first respondent Government is illegal as having not followed the procedure envisaged under Section 12 of the Act. As discussed by me supra it is a misconceived act on the part of the petitioners as there is no modification of any Master plan or the Zonal Plan as the case may be that is involved here. Even on the factual aspect, it has been the contention of the learned counsel for the 4th respondent society that the three acres of land set apart for public purposes has not been taken away and it is a clear case of shifting the area from one place to another place, which is required in view of the ground situation for the purpose of constructing the houses. To buttress the said contention, the learned counsel seeks to rely upon the original lay out plan prepared and the modified lay out plan prepared and sanctioned under the impugned proceedings by the first respondent Government. The learned counsel has further sought to place reliance upon certain resolutions passed by the society in support of his contention that the society passed the necessary resolution in its general body meeting before seeking to apply for the sanction of the modified lay out plan for obtaining the necessary permission from the members of the society. The learned counsel for the petitioners at this stage made a vain attempt to dispute the genuineness of the resolutions. I am afraid, this court cannot go deep into those contentious issues as to the genuineness or otherwise of the validity of the resolutions, the copies of which have been placed before this Court. If the petitioners are so serious, they have necessary remedy where they can validly and effectively dispute the action on the part of the Committee of the Society. In view of the above facts and circumstances, inasmuch as it is not a case of modification of any Master Plan or the Zonal Plan, as the case may be, and as it is not being sought to be done by the authorities as envisaged under Clause (e) of Section (2) of the Act, I am of the considered view that the remedy of the petitioners is elsewhere, but not before this court under Article 226 of the Constitution of India."

8. It appears some of the persons owning the plots in the Society raised disputes before the Cooperative Sub-Registrar/ Arbitrator u/s 62(4) of A.P.Cooperative Societies Act 7, 1964. In the said dispute the revised lay out plan came to be

questioned. Ultimately the Cooperative Sub-Registrar/Arbitrator recorded a finding that the petitioners before him have not established their case. I deem it appropriate to refer the relevant portion of the Award passed by the Cooperative Sub-Registrar/Arbitrator, which reads as follows:

" The plaintiff verified his signatures and admitted that they are of his own.

Therefore, it is evident that the Managing Committee has approved the revised layout and allotted the plots to the members of the Society as per the resolutions, dated 11.5.1997 and 13.11.1997 of the Managing Committee of the Muthyala Rao Cooperative Housing Society Limited. In the light of the above facts, the main allegation in the dispute that the allotment of plots were made without placing before the Managing Committee is baseless and false.

In view of the above facts, I am satisfied that the allegations made by the plaintiffs are not established. Therefore, in exercise of the powers under Section 62(1) and (4) of the A.P.C.S.Act 7 of 1964, I do hereby dismiss the petition filed by Sri.R.Subramanyam and nine others without cost."

It is crystal clear from the records that revised lay out plan has been questioned in the earlier batch of writ petitions and also before the Cooperative Sub-Registrar/Arbitrator. The petitioners claim to have purchased the property from members of the 3rd respondent-Society. When the vendors of the petitioners did not choose to question the revised lay out plan, the petitioners cannot be permitted to question the same. Another important aspect which is required to be noted is that the revised plan came to be approved basing on the resolutions passed by the 3rd respondent-Society to which the vendors of the petitioners herein were members of the Society. It is well settled that once a person becomes a member of a cooperative society, he loses his individuality qua the society and he has no independent rights except those given to him by the statute and the by-laws. He must act and speak through the society or rather, the society alone can act and speak for him qua rights or duties of the society as a body. In that view of the matter, I find all the three writ petitions are devoid of merit and they are liable to be dismissed.

9. Accordingly, all the three writ petitions are dismissed. No costs.

Dated: 09-12-2005. (**B.Seshasayana Reddy,J**)

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COMMON ORDER

DISPOSED OF ON: 09-12-2005.

Once a person becomes a member of a cooperative society, he loses his individuality qua the society and he has no independent rights except those given to him by the statute and the by-laws. He must act and speak through the society or rather, the society alone can act and speak for him qua rights or duties of the society as a body. So if the statute which authorises compulsory amalgamation of cooperative societies provides for notice to the societies concerned, the requirement of natural justice is fully satisfied. The notice to the society will be deemed as notice to all its members. That is why S. 13 (9) (a) provides for the issue of notice to the societies and not to individual members. S. 13(9)(b), however, provides the members also with an opportunity to be heard if they desire to be heard. Notice to individual members of a cooperative society, in our opinion, is opposed to the very status of a cooperative society as a body corporate and is, therefore, unnecessary. We do not consider it necessary to further elaborate the matter except to point out that a member who objects to the proposed amalgamation within the prescribed time is given, by S. 31(11), the option to walk out, as it were, by withdrawing his share, deposits or loans as the case may be.